

48A C.J.S. Judges § 369

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

X. Special or Substitute Judges and Like Judicial Officers

C. Authority, Powers, and Duties of Special or Substitute Judge

§ 369. Duration of authority of special or substitute judge

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The duration of the authority of a special, substitute, or like judge depends on whether he or she has been selected to try a particular case or cases, or to substitute for the regular judge in all judicial matters that might come before the court.

Generally, a substitute judge cannot function longer than his or her substitution for the local judge continues,¹ and a substitute judge's commission expires when the reason for such substitution ceases to exist.² On the other hand, the appointment of a temporary judge continues until a permanent replacement is appointed or elected or until the specified time of appointment expires.³ A special or substitute judge ordinarily has power and authority to act until the completion of any business begun before him or her⁴ and to enforce compliance with his or her orders.⁵ A special judge appointed following a disqualification or recusal of the regular judge serves for the duration of the particular case.⁶

Under some provisions, after the expiration of a temporary judicial assignment, the judge assigned retains the powers, duties, and jurisdiction of the regular judge of the court to which he or she was assigned with respect to matters pending before the assigned judge or considered by him or her during the term of such temporary assignment.⁷ However, the assigned judge may not dispose of matters presented to him or her subsequent to the term of the appointment, relating to causes the assigned judge considered while sitting.⁸

When an order assigns a judge to perform a particular task, upon the completion of that task, the authority of the judge over the matter expires, even though the court's jurisdiction may continue, and in order for the judge to preside over a related matter, there must be a new assignment.⁹

The terms of the assignment order controls when a visiting judge's authority will terminate,¹⁰ and when a judge is ill or absent from the state, the order appointing a special judge will determine the length of time the special judge will serve to fulfill his or her appointment.¹¹ The order appointing a special judge should be either for a definite period of time or for a specific case,¹² and a standing order appointing a special judge to hear an entire class of cases is not appropriate.¹³ However, it has been said that a written appointment need not set forth the duration of a judge pro tempore's authority¹⁴ although a judge pro tempore cannot be continually reappointed or indefinitely appointed.¹⁵

Where the extent of a senior judge's appointment was to preside over one trial, this belies any claim of the judge's indefinite service.¹⁶

A judge commissioned to preside over a special session of court that was to continue for two weeks "or until the business is completed" had jurisdiction to enter an order taxing costs and expert witness fees outside of the two week period as the business of the court was not completed until the execution of judgment and the setting of costs.¹⁷

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Footnotes

- 1 Okla.—*Castle v. State*, 1964 OK CR 52, 392 P.2d 758 (Okla. Crim. App. 1964).
- 2 La.—*State ex rel. Livaudais v. Himel*, 201 La. 168, 9 So. 2d 509 (1942).
- 3 Okla.—*Castle v. State*, 1964 OK CR 52, 392 P.2d 758 (Okla. Crim. App. 1964).
- 4 U.S.—*Barnhill v. U.S.*, 305 F.2d 158 (5th Cir. 1962).

Minn.—*State ex rel. La Jesse v. Meisinger*, 258 Minn. 297, 103 N.W.2d 864 (1960).

As provided in order of appointment
La.—*Smith v. Cappaert Manufactured Housing, Inc.*, 89 So. 3d 1234 (La. Ct. App. 3d Cir. 2012), writ denied, 98 So. 3d 857 (La. 2012) and writ denied, 98 So. 3d 871 (La. 2012).

Final determination of proceeding
Cal.—*Gridley v. Gridley*, 166 Cal. App. 4th 1562, 83 Cal. Rptr. 3d 715 (1st Dist. 2008).

Final disposition of the case
Ind.—*Kimball v. State*, 474 N.E.2d 982 (Ind. 1985).

Resentencing on remand
Idaho—*State v. Pratt*, 128 Idaho 207, 912 P.2d 94 (1996).
- 5 Okla.—*Putnam v. Saied*, 1978 OK 161, 587 P.2d 1371 (Okla. 1978).
- 6 Ind.—*Pope by Smith v. Pope*, 701 N.E.2d 587 (Ind. Ct. App. 1998).
- 7 Fla.—*State ex rel. Wesley Const. Co. v. O'Connell*, 347 So. 2d 442 (Fla. 3d DCA 1977).

N.Y.—*People v. Yannicelli*, 40 A.D.2d 564, 334 N.Y.S.2d 550 (2d Dep't 1972), order aff'd, 33 N.Y.2d 621, 347 N.Y.S.2d 580, 301 N.E.2d 549 (1973).
- 8 Fla.—*State ex rel. Wesley Const. Co. v. O'Connell*, 347 So. 2d 442 (Fla. 3d DCA 1977).
- 9 Tex.—*Ex parte Holland*, 807 S.W.2d 827 (Tex. App. Dallas 1991), writ dismissed w.o.j., (Sept. 5, 1991).

Remand

The trial court's sworn and elected judge, not a visiting judge who presided over a first trial, had authority to preside over a second trial following remand in a divorce action; assignment of the case to the visiting judge did not give the visiting judge exclusive authority to try the case, and the visiting judge's assignment to the case was canceled nine months before the second trial.

Tex.—*Bufkin v. Bufkin*, 259 S.W.3d 343 (Tex. App. Dallas 2008).

10 Tex.—*In re Amos*, 397 S.W.3d 309 (Tex. App. Dallas 2013).

11 Miss.—*Covington v. Montgomery*, 43 So. 3d 1193 (Miss. Ct. App. 2010).

12 La.—*Smith v. Cappaert Manufactured Housing, Inc.*, 89 So. 3d 1234 (La. Ct. App. 3d Cir. 2012), writ denied, 98 So. 3d 857 (La. 2012) and writ denied, 98 So. 3d 871 (La. 2012).

Tenn.—*Ferrell v. Cigna Property & Cas. Ins. Co.*, 33 S.W.3d 731 (Tenn. 2000).

13 Tenn.—*Ferrell v. Cigna Property & Cas. Ins. Co.*, 33 S.W.3d 731 (Tenn. 2000).

14 Ind.—*Koo v. State*, 640 N.E.2d 95 (Ind. Ct. App. 1994).

15 Wash.—*Application of Eng*, 113 Wash. 2d 178, 776 P.2d 1336 (1989).

16 Ga.—*Smith v. Langford*, 271 Ga. 221, 518 S.E.2d 884, 97 A.L.R.5th 767 (1999).

17 N.C.—*Hockaday v. Lee*, 124 N.C. App. 425, 477 S.E.2d 82 (1996).

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